IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 15258 of 2007(N)

PETITIONER:

TERRITORY CO-ORDINATOR,
BHARAT PETROLEUM CORPORATION LTD.,
ERNAKULAM TERRITORY OFFICE (RETAIL),
IRUMPANAM (P.O.),
KOCHI.

BY ADV. SRI.N.N.SUGUNAPALAN, SC, BPC
SRI.S.SUJIN

RESPONDENTS:

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1. THE TOWN PLANNING OFFICER,
CORPORATION OF THRISSUR,
THRISSUR.

2. SECRETARY,
CORPORATION OF THRISSUR,
THRISSUR.

3. CORPORATION OF THRISSUR,
REP.BY ITS SECRETARY,
THRISSUR.

BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.15258 of 2007

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Dated this the 8th day of June, 2007

JUDGMENT

Petitioner challenges Ext.P6. Petitioner also seeks a direction to consider Ext.P7 objection. Case of the petitioner in brief is as follows:

Petitioner is the Territory Co-ordinator of M/s. Bharat Petroleum Corporation Limited. He had applied for building permit, which was granted vide Ext.P1. The construction work was started and it was continuing. When construction is almost completed Ext.P2 notice was issued stating that there was slight deviation from the approved plan. Ext.P3 is another notice issued to stop construction. This is followed by Ext.P4 show cause giving seven days from 12.4.2007. Petitioner submitted Ext.P5 dated 17.4.2007. But Ext.P6 is issued on 13.4.2007, exactly two days after issuance of Ext.P4 notice, confirming the order. Ext.P7 is submitted by the petitioner giving representation.

2. Counter affidavit is filed by the Corporation interalia stating that petitioner suppressed facts. It is stated that petitioner made application for permission for construction of a canopy at the petrol

pump conducted in 2.63 Ares of land at a dimension of 14 x 8 meters having an area of 112 sq.meters in steel section using aluminium sheets. Sanction was granted after removal of old canopy having a size of 11 x 7.2 meters and to construct a new canopy of 14 x 8 meters. Violation was noticed however and the construction was done at a size of 18.6 x 9.5 meters. Further it was noticed that the structure work was done for sheet roofing over the existing cabin at a size of 4.1 x 3.55 meters. Accordingly notice was issued, which was acknowledged on 12.4.2007. Even after acknowledgment of receipt of notice petitioner did more work during the night of 12.4.2007, it is stated. Thereupon Ext.P6 was issued confirming Ext.P3 order. In view of explanation being found unsatisfactory Ext.R1 was issued authorising the Building Inspector to carry out demolition.

3. Reply affidavit is filed by the petitioner. Heard counsel for the petitioner and the respondents.

4. Senior counsel for the petitioner Sri. N.N Sugunapalan submits that contrary to the law laid down by this court in the decision reported in **Sasidharan v. Corporation of Cochin** (2000(3) KLT SN

34, Case No.40) petitioner was not heard and in fact Ext.P6 order dated 13.4.2007 was issued. It is pointed out that Exts.P2, P3 and P4 are dated 12.4.2007. Petitioner's objection was not considered, it is stated.

5. Sri. K.B.Mohandas, counsel for the respondents would submit that this is a case where the petitioner continued construction even after receipt of stop memo. It is to be noted that there is no specific denial of the contention of the respondents that the petitioner continued to do the work after stop memo was issued. It is further noticed that the petitioner, in the reply given as Ext.P5 has not denied the case of deviation from the plan. Of course they have stated that certain rectifications will be carried out in respect of certain matters. In respect of certain other matters it is their case that request to amend the approval will be given. In regard to the most important complaint that five columns were put up instead of two, it is stated in Ext.P5 that for certain reasons they were forced to take the columns to the outer edge and that they had to set up three more columns at the back side. It is also stated that they will put up the necessary request to amend the approval accordingly.

6. It is true that before a final order is passed normally the petitioner would be entitled to be heard and an order should be passed accordingly.

7. Learned Senior Counsel would submit that having regard to the provisions contained in Rule 143 of the Kerala Municipal Building Rules deviation from the plan as such can be requested and the petitioner will move the respondents under Rule 143. Sri. K.B. Mohandas, learned counsel for the respondents would submit that if an application is received within a time limit, it can be considered in accordance with law. Senior Counsel Sri. N.N. Sugunapalan submits that the petitioner will prefer an application under Rule 143 within one week from today.

The writ petition is disposed of directing that if the petitioner submits an application purporting to be under Rule 143 of the Building Rules within one week from today, the respondent Corporation will take a decision in the matter in accordance with law. Till such time as

a decision is taken, the impugned order shall not be implemented.

(K.M. JOSEPH, JUDGE)

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